

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

LESLIE LLOYD MOSS, PRO SE,  
also known as LESLIE L. MOSS,  
TDCJ-CID No. 896113,

Plaintiff,

V.

Major BRIAN CLARK,  
Correctional Officer III ROBERT B. NIXON,  
Sergeant MATTHEW E. BORUNDA,  
Correctional Officer III CELEB SIMMS,  
Correctional Officer IV  
CYNTHIA M. BECERRA,  
Sergeant SHERRY A. WHEELER, and  
Sergeant STEPHEN A. ORTEGA,

Defendants.

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2:10-CV-0259

**ORDER GRANTING DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT AND ORDER OF DISMISSAL**

Plaintiff LESLIE LLOYD MOSS, acting pro se and while a prisoner incarcerated in the Texas Department of Criminal Justice, Correctional Institutions Division, has filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-named defendants employed by or otherwise associated with the Texas Department of Criminal Justice and has been granted permission to proceed pursuant to Title 28, United States Code, section 1915.

By Order of Partial Dismissal issued September 24, 2012, all of plaintiff's claims against defendants in their official capacities were dismissed without prejudice pursuant to Rule 12(b)(1), FED.R.CIV.PRO., plaintiff's claims against defendant BECERRA were dismissed without prejudice for failure to state a claim on which relief could be granted, and plaintiff's

claims for injunctive relief against defendant CLARK were dismissed without prejudice for failure to state a claim on which relief could be granted.

On February 13, 2014, a Report and Recommendation was issued by the United States Magistrate Judge recommending that defendants' Motion for Summary Judgment be GRANTED and plaintiff's claims against all remaining defendants be DISMISSED WITH PREJUDICE.

As to defendants NIXON and SIMMS in the alternative, should it be determined these defendants were not entitled to benefit from the appearing defendants' favorable summary judgment motion, it was the further RECOMMENDATION of the Magistrate Judge to the United States District Judge that plaintiff's claims against defendants NIXON and SIMMS be DISMISSED WITHOUT PREJUDICE PURSUANT TO RULE 4, FEDERAL RULES OF CIVIL PROCEDURE, for failure to perfect service or provide sufficient information to enable the U.S. Marshal to effect service.

The period for response has expired, and plaintiff filed his Objections on March 4, 2014.

The Court has made an independent examination of the records in this case and has examined plaintiff's Objections and the Magistrate Judge's Report and Recommendation. The Court is of the opinion that plaintiff's Objections should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, OVERRULES plaintiff's Objections and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge in this case.

IT IS THEREFORE ORDERED that defendants' Motion for Summary Judgment is GRANTED and that plaintiff's remaining claims against all remaining defendants are

DISMISSED WITH PREJUDICE. In the alternative, and solely with respect to defendants NIXON and SIMMS, plaintiff's claims against defendants NIXON and SIMMS are DISMISSED WITHOUT PREJUDICE PURSUANT TO RULE 4, FEDERAL RULES OF CIVIL PROCEDURE, for failure to perfect service or provide sufficient information to enable the U.S. Marshal to effect service.

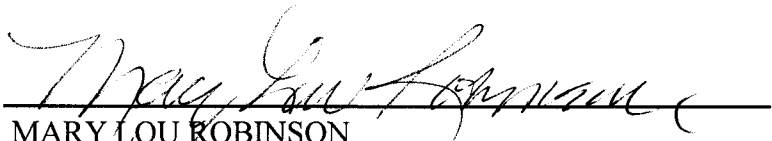
LET JUDGMENT BE ENTERED ACCORDINGLY.

Plaintiff's untimely request, contained in his Objections, for an extension in which to respond to defendants' motion for summary judgment is not supported by meritorious argument and is DENIED.

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

It is SO ORDERED.

Signed this the 11<sup>th</sup> day of March, 2014.

  
MARY LOU ROBINSON  
United States District Judge